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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/965,537      | 09/26/2001  | Jonathan Lacey       | 10004238-1          | 3740             |

7590 02/10/2006

AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Administration  
P.O. Box 7599  
Loveland, CO 80537-0599

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |  |                                 |
|--|--|---------------------------------|
| <b>Notification of Non-Compliant Appeal Brief<br/>(37 CFR 41.37)</b> | Application No.<br>09/965,537                          | Applicant(s)<br>LACEY, JONATHAN |
|  | Examiner<br>Daniel J. Petkovsek<br><i>10/09 2/2/06</i> | Art Unit<br>2874                |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on September 12, 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1.  The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4.  (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5.  The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6.  The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8.  The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9.  The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10.  Other (including any explanation in support of the above items):

see attached correspondence.

  
AKM ENAYET ULLAH  
PRIMARY EXAMINER

### **DETAILED ACTION**

A review of the application indicates that the Appeal Brief filed September 12, 2005, does not fully comply with all the requirements of the 37 CFR § 41.37.

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(X) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A supplemental Appeal Brief containing the missing Evidence appendix and Related Proceedings appendix, in compliance with 37 CFR § 41.37, is required. It is noted that these two indexes may be left blank if there is no information. For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule located at the following URL:

[www.uspto.gov/web/office/dcom/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/office/dcom/bpai/fr2004/moreinfo.html)

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Petkovsek whose telephone number is (571) 272-2355. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2874

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Daniel Petkovsek  
February 3, 2006

  
AKM ENAYET ULLAH  
PRIMARY EXAMINER